IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.1179 OF 1999

Rohidas Gorakh Choudhari ...Petitioner
Vs.
Bank of Maharashtra & Anr. ...Respondents

Mr.V.P.Sawant for Petitioner
Mr. V.P. Shintre and Mr. A.G. Damle for Resnpndent No.1

CORAM: SMT. RANJANA DESAI &
SMT. ROSHAN DALVI, JJ.
DATED: 26TH NOVEMBER, 2007

ORAL JUDGMENT (Per Smt. Ranjana Desai, J.)

1. The petitioner was working with the respondent bank. He had joined the respondent bank as a Junior Officer on 10th March, 1954. On 8th June, 1981 the petitioner was served with a charge-sheet calling upon him to make his statement of defence. In the charge-sheet it was inter alia stated that while working as a Junior Manager at Varanasi branch during the period from 1.1.1980 to 30.9.1980 the petitioner had committed misconduct i.e. he exceeded his powers by disregarding instructions issued from time to time and

caused loss to the respondent bank.

2. By order dated 2nd July, 1981 the petitioner was suspended. Departmental Inquiry was conducted after following proper procedure. The Divisional Manager by his letter dated 4th May, 1983 informed the petitioner that the petitioner was held guilty of the charges. There is no dispute about the fact that the appellate authority dismissed the petitioner's appeal. Review application filed by the petitioner was also dismissed.

3. The petitioner challenged his dismissal by preferring a Writ petition in this Court being Writ Petition No.2987 of 1984. Said writ petition was disposed of on 17th August, 1984 in terms of the minutes of order as not pressed. We may quote the minutes of order:

> *"1. The Petition will be allowed to withdraw his contribution to provident fund with interest amounting to Rs.28431.73 immediately.*
>
> *2.The Bank will deposit the amount of their contribution to provident fund standing to the credit of the petitioner, and the amount of gratuity aggregating Rs.58300/- in a fixed deposit for five years as and by way of security which will carry an interest of 11% p.a this amount will be paid to the petitioner at the expiry of five years after deducting*

the loss, if any, caused to the Bank, by the petitioner in case the loss is determined during that period.

3. The Bank will pay quarterly interest to the petitioner on the said sum of Rs.58300/- kept in fixed deposit during the said period of five years."

4. The petitioner is aggrieved by the letter dated 31st January, 1990 sent by the Deputy General Manager, Personnel, informing the petitioner as under:

" As you are aware that as per order of the Court banks contribution to P/F and gratuity amount totaling to Rs.56295.63 was kept in QIDR No.564638 with Lokmangal Extention counter on 31.1.85 for the period of 5 years. The receipt has matured today i.e. 31.1.90. As per the direction of the court we have calculated the amount of loss in various accounts and the loss is confirmed by the Statutory Auditors who have audited Varanasi branch at various times.

In the following accounts the provisions made exceeds Rs.202000/- and it will be observed that the amount of loss far exceeds the amount of short term deposit receipt. Therefore, please note that the entire amount of the receipt is recovered by us towards the loss, and interest on the receipt only will be paid to you.

Name of the accounts where substantial loss has incurred by the bank are – Tej Bahadur Ram Bahadur, Rajan Vastralaya, Steel and Allied industry, Yagnik Electrical winder, Srimaa Lime Products Pvt. Ltd., Gupta Industries etc."

5. We have heard learned Counsel for the petitioner. Learned Counsel for the petitioner contended that the respondent bank could not have appropriated the entire amount of gratuity towards the loss allegedly caused to the bank on account of the petitioner. He submitted that as per the minutes of the order dated 17th August, 1984 at the expiry of 5 years the respondent bank had to first determine whether any loss was caused to the bank. Only after determining the loss it could have appropriated the amount deposited by the bank towards the alleged loss. He submitted that the respondent bank has not made any effort to determine the loss. He pointed out that the petition is filed on 5th February, 1999. A specific grievance is made in the petition in this regard. However, till date no reply is filed by the bank. He submitted that therefore the entire challenge raised in the earlier petition is revived.

6. We may note that on the last occasion when learned Counsel for the petitioner made this grievance, we adjourned the writ petition and directed learned Counsel appearing for the bank to contact the concerned officer and produce the relevant record before the Court, so that we can find how the loss is calculated. Mr. Damle submitted that on two

occasions he tried to contact the respondent bank however, there was no response. Learned Counsel is therefore unable to assist the Court. He however, drew our attention to affidavit of Madhav Shridhar Joshi, Deputy General Manager of Maharashtra Bank dated 27th June, 1998 filed in Contempt Petition No.79 of 1990 filed by the petitioner where it is stated that the bank's contribution to Provident Fund and the amount of Gratuity aggregating to Rs.56,295.63 was kept in fixed deposits on 31st January, 1985 @ 11.5% p.a for 5 years and quarterly interest was paid to the petitioner from time to time till the date of maturity of the deposit amount i.e. 31st Janury, 1990. The affidavit further states that the amount of deposit was to be kept by way of security for the losses which would be suffered by the bank due to negligence of the petitioner. After the date of maturity, the bank was entitled to recover the losses from the fixed deposit amount kept by way of security. It is further stated in the affidavit that as on the date of maturity of the deposit i.e. on 31.1.1990 total losses in 11 accounts were to the extent of Rs.9.65 lacs. The said losses were to be recovered by the bank from the petitioner. It is further stated that the losses recoverable by the bank are much more than the amount of deposit in the petitioner's name and therefore, the question of any amount being refunded by the bank to the petitioner

does not arise.

7. Mr. Damle has also drawn our attention to letter dated 31st January, 1990 addressed by the bank to the petitioner mentioning the names of accounts in which according to the bank substantial losses have been incurred by it. They are Tej Bahadur Ram Bahadur, Rajan Vastralaya, Steel and Allied industry, Yagnik Electrical winder, Srimaa Lime Products Pvt. Ltd., Gupta Industries etc. Mr. Damle submitted that, therefore, the losses incurred by the bank appear to be much more than the amount deposited. Mr. Damle also pointed out that as per the minutes of order the bank was not supposed to quantify the amount and inform the petitioner the quantified amount. The bank was only to determine and deduct the losses.

8. It is true that minutes of order do not specifically state that the loss has to be quantified and informed to the petitioner; But when a claim is made by the bank that losses incurred by the bank are huge and more than the deposited amount, it was incumbent on the bank to file affidavit and state how losses were calculated. This is more so because the petitioner is disputing that such losses were caused to the bank. Principles of natural justice require the

bank to make good its contention. Principles of natural justice also require us to take note of the grievance made by the petitioner: It is unfortunate that in a matter of this type the bank has not thought it fit to file a reply stating how the loss is determined. We had adjourned the petition to give the bank a chance to meet the petitioner's contention. No affidavit is filed. The bank has not even deputed any officer to the Court with the record. We are distressed at this approach of the bank.

9. As per minutes of order dated 17th August, 1984 an amount of Rs.58,300/- was to be deposited in fixed deposit with the bank for a period of 5 years. The said amount was to carry interest at 11% p.a. Accordingly bank has deposited the amount and the 5 years period has expired on 31st September, 2006. There is no dispute about the fact that up to 31st January, 1990 interest at the rate of 11% was paid to the petitioner. Thereafter Contempt Petition came to be filed by the petitioner. In the Contempt Petition the respondent was directed to deposit an amount of Rs.56,295.63 with interest at the rate of 11% p.a from 1st February, 1990 till date of deposit. The bank therefore, deposited amount of Rs.56,295.63 and also interest amount of Rs.51,087.70 on 5th May, 1998. There is no dispute about the fact that this

amount was also directed to be invested and interest on the said deposited amount has been paid to the petitioner as per order dated 16th September, 1990 passed in the Contempt Petition. On account of the fact that respondent bank has not been able to show us how the loss has been calculated, the petitioner is entitled to the amount of Rs.1,07383/- which is deposited in this Court and invested by this Court. Needless to say that the said amount must be paid with the accrued interest. We direct the Registrar of this Court to do the needful and ensure that the above mentioned amount is paid to the petitioner. We must note that correspondence made by the wife of the petitioner indicates that the petitioner has suffered a paralytic stroke. That is one of the reasons which has persuaded us to pass this order.

10. We record and accept Mr. Sawant' sstatement that he does not press prayers (a),(b) and (c) to the Petition in view of the above order.

11. Petition is disposed of accordingly.

(SMT. ROSHAN DALVI, J.) **(SMT.RANJANA DESAI, J.)**